

Public Health Appeal Board

Annual Report 2001



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ISSN 0845-6089



103-01840/

ALBERTA
HEALTH AND WELLNESS

Office of the Minister

January 2002

The Honourable Ken Kowalski, M.L.A.
Speaker of the Legislative Assembly
325 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Speaker:

I have the honour to present the Annual Report of the Public Health Appeal Board for the year January 01, 2001 to December 31, 2001.

Sincerely,

Gary G. Mar, Q.C.
Minister of Health and Wellness
M.L.A. Calgary Nose Creek



PUBLIC HEALTH APPEAL BOARD

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January 2002

The Honourable Gary G. Mar, Q.C.
Minister of Health & Wellness
323 Legislature Building
Edmonton, Alberta
T5K 2B6

Minister:

I have the honour and privilege to present the Annual Report of the Public Health Appeal Board for the year January 01, 2001 to December 31, 2001.

Respectfully submitted,

A handwritten signature in cursive script that reads "Hilton R. Pharis".

Hilton R. Pharis, Chairman
Public Health Appeal Board

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Public Health Appeal Board Members

Hilton R. Pharis (Lundbreck)

Chair

Mr. Pharis, appointed chair February 03, 1999, is a cattle rancher and past vice-chair of the Public Health Advisory and Appeal Board. He was elected to the council of the Municipal District of Pincher Creek from 1961 to 1989. Mr. Pharis is also past chairman of the Oldman River Dam Environmental Advisory Committee, the Oldman River Regional Planning Commission and the Health Unit Association of Alberta.

Louise Lougheed (St. Albert)

Vice-chair

Ms. Lougheed, appointed vice-chair February 03, 1999, contracts secretarial/computer work out of her home for two consulting management firms. She was a member of the Aspen Regional Health Authority #11 from 1994 to 1995, and held a supervisory position at Athabasca University Library in Athabasca for nine years before moving to St. Albert.

Marvie Kenny (Oyen)

Alternate Vice-chair

Ms. Kenny, appointed alternate vice-chair April 08, 1999, is a dental hygienist and partner on a grain farming operation. She also volunteers for various community organizations.

Karen Egge (Woking)

Member

Ms. Egge is the executive director of the Northwest Regional Learning Consortium and partner in a mixed farm operation in northern Alberta. She has provided extensive community service through school trusteeship and college board leadership.

William Love (Calgary)

Member

Mr. Love is an independent insurance broker and consultant. He is the chairman of the Board of Examiners for Certified Dental Mechanics and a willing volunteer for church and community organizations.

Margaret Niehaus - Administrative Assistant/Coordinator

Background

The Public Health Appeal Board (PHAB) was established on February 03, 1999 under the amended *Alberta Public Health Act*. The new Public Health Appeal Board replaced the former Public Health Advisory and Appeal Board, which was established in 1985.

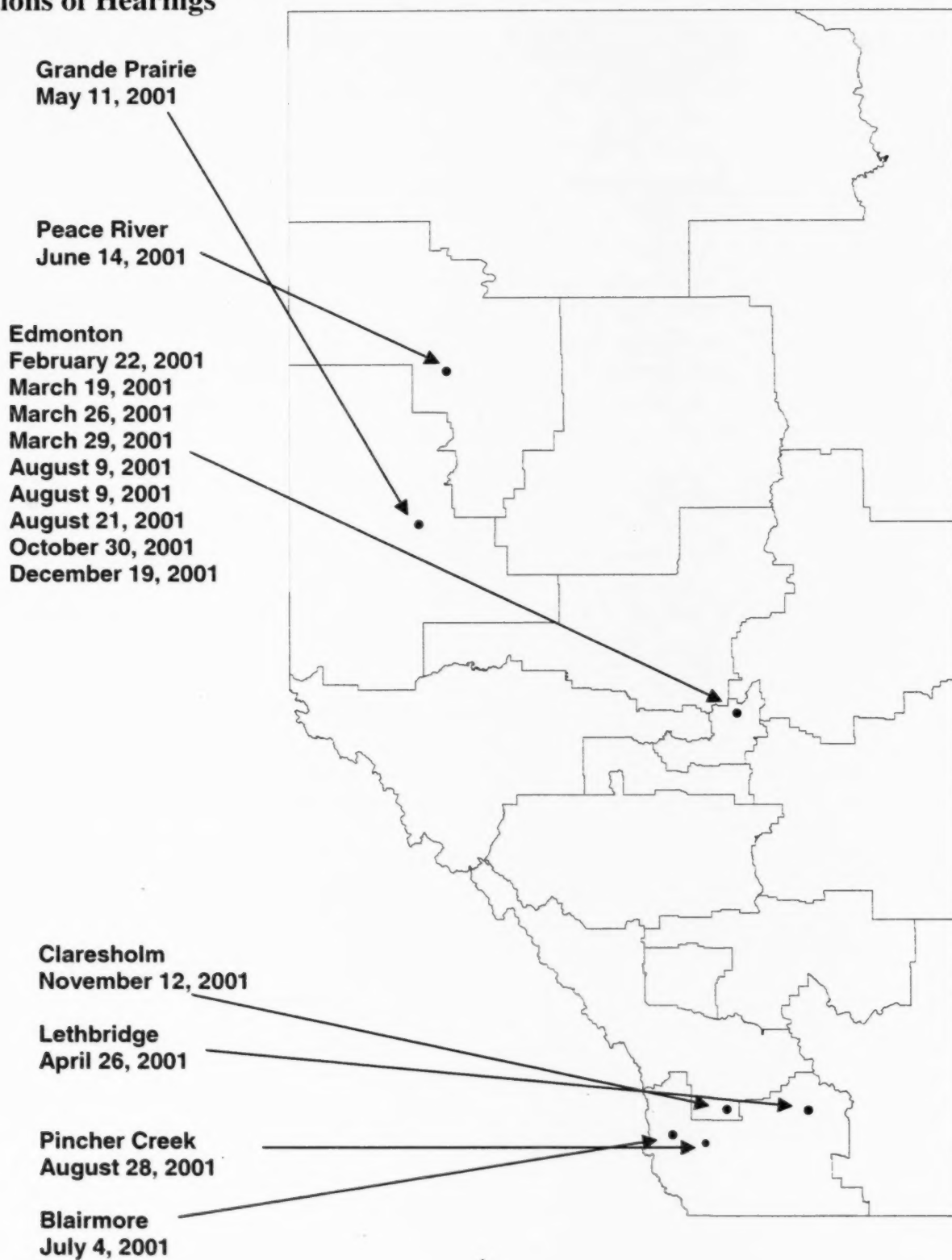
PHAB is subject to the general rules of administrative law and natural justice as they apply to quasi-judicial tribunals. To that end, PHAB has retained Donald R. Cranston, Q.C., of the law firm Bennett Jones LLP to provide independent legal counsel.

Duties

The Public Health Appeal Board (PHAB) hears appeals of regional health authority (RHA) decisions, as defined in the *Public Health Act*. A person directly affected by a decision of an RHA and considers himself or herself aggrieved by that decision may appeal to PHAB. The Board may also engage the services of people with special technical, professional or other knowledge to assist in the hearing of appeals. Once an appeal is heard, the Board may confirm, reverse or vary the RHA decision and shall give written notice to the Appellant and the RHA.

Five PHAB members, with varied professional backgrounds and representation across Alberta, carry out these duties.

Locations of Hearings



Appeal Activities and Summaries

The following is a summary of all appeals or applications received and/or heard by the Public Health Appeal Board from January 01, 2001 to December 31, 2001:

01/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

The Appellant complied with the Order and withdrew the appeal.

02/01

Order of Aspen Regional Health Authority

Appeal of the Order of an Executive Officer of the Aspen Regional Health Authority, under Section 72 of the *Public Health Act*, requiring the Appellant to:

- cease disposing of sewage in and/or on the ground surface, and
- install an approved private sewage disposal system to accommodate all sewage and sewage effluent generated on the property.

A letter of appeal was submitted to our office by the Appellant. After many attempts to correspond with the Appellant, we received no reply. Thus, this file was closed.

03/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

Hearing held February 22, 2001

PHAB upheld the Order issued by an Executive Officer of the Capital Health Authority. The Appellant is to correct the conditions identified in the Order to the satisfaction of an Executive Officer of the Capital Health Authority or have the premises remain vacant.

04/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

Hearing held March 19, 2001

The Appellant withdrew this appeal at the hearing.

05/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

Hearing held March 26, 2001

PHAB upheld the Order issued by an Executive Officer of the Capital Health Authority. The Appellant is to correct the conditions identified in the Order to the satisfaction of an Executive Officer of the Capital Health Authority.

06/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

The Appellant complied with the Order and withdrew the appeal.

07/01

Order of Capital Health Authority

Appeal of two Orders of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

Hearing held March 29, 2001

PHAB upheld the Orders issued by an Executive Officer of the Capital Health Authority. The Appellant is to correct the conditions identified in the Orders to the satisfaction of an Executive Officer of the Capital Health Authority.

08/01

Order of Chinook Regional Health Authority

Appeal of the Order of an Executive Officer of the Chinook Regional Health Authority under Section 72 of the *Public Health Act*, requiring:

- a lagoon to be operated to maintain a minimum freeboard of 0.5 metres at all times,
- the obtaining of all requisite permits for and construct an appropriately engineered lagoon facility, and
- the Appellant to have and to adhere to an approved manure management plan.

In the event this is not completed by the specified date, the operator is to cease all livestock vehicle and trailer washing operations on and from these lands.

Hearing held April 26, 2001

PHAB varied the Order issued by an Executive Officer of the Chinook Regional Health Authority. Due to excess sewage from the lagoon resulting in a nuisance, the Order required the livestock truck wash facility to dispose of effluent to a level sufficient to provide at least one meter of freeboard and to ensure no effluent escapes the property and no further nuisance be created. As the lagoon is not of sufficient capacity to handle the volume of waste produced at the washing facility, PHAB required the livestock truck wash facility to:

1. operate the existing lagoon so as to maintain a minimum freeboard of 0.5 metres at all times;
2. obtain all requisite permits for the construction of a new sewage lagoon for the livestock truck wash facility and that the design be approved by an accredited engineer. The Chinook Regional Health Authority is to be provided with a copy of the design prior to construction and the new engineered lagoon to be constructed and in operation no later than June 27, 2001;
3. prepare and have approved by the appropriate agencies a manure management plan for the livestock truck wash facility no later than June 27, 2001;
4. if items 2 and 3 are not completed within the prescribed time, the livestock truck wash facility must cease all washing operations on and from the lands;
5. ensure any irrigation of this land with effluent from the lagoon and any runoff be contained on this property; and
6. ensure no human waste be dumped or otherwise disposed of in the lagoon.

09/01

Order of Mistahia Regional Health Authority

Appeal of the Order of an Executive Officer of the Mistahia Regional Health Authority under Section 72 of the *Public Health Act*, declaring a bulk water hauling business is in contravention of Section 5(1) of the *Food Regulation*. The Appellant owns two vehicles used for bulk water hauling services for transporting, distributing or selling potable water. One of the vehicles has not been issued a Food Establishment Permit and the other vehicle does not hold a valid Food Establishment Permit.

Hearing held May 11, 2001

PHAB varied the Order issued by an Executive Officer of the Mistahia Regional Health Authority. The Appellant will be issued a temporary Food Establishment Permit for the 1995 GMC Top Kick for hauling potable water. This Permit shall expire August 1, 2001. The Appellant is to be issued a temporary Food Establishment Permit for the 1985 Western Star for hauling potable water. This Permit shall expire June 30, 2001. As a condition of these Permits, the Appellant must comply with the Mistahia Health Region's "Health Standards for Bulk Water Haulers". Before further Food Establishment Permits are issued for the two vehicles, the Appellant must repair or replace the lining inside the tanks to the satisfaction of an Executive Officer of the Mistahia Regional Health Authority.

10/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

The Appellant complied with the Order and withdrew the appeal.

11/01

Order of Peace Regional Health Authority

Appeal of Orders of an Executive Officer of the Peace Regional Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation and requiring the Appellant to:

- cease the discharge of sewage onto the ground surface of this property, and
- treat with lime any sewage already discharged onto the ground surface of the property.

Hearing held June 14, 2001

PHAB varied the Orders issued by an Executive Officer of the Peace Regional Health Authority. The Orders should not incorporate the phrase "unfit for human habitation". As long as the Appellant continues to rent the property, the sewage must be pumped out and hauled away in a manner acceptable to an Executive Officer of the Peace Regional Health Authority until such time as an authorized person or agency approves the existing sewage system. If this is not carried out, the property must be vacated by August 31, 2001 and remain vacant until there is compliance.

12/01

Order of David Thompson Regional Health Authority

Appeal of the Order of an Executive Officer of the David Thompson Regional Health Authority under Section 7 of the *Food Regulation* under the *Public Health Act*. The Appellant, who owns a concession, is not complying with the Food Regulation in that:

- the menu exceeds capacity of facilities and equipment,
- cooking equipment is inadequate,
- home base facility is not approved by the City of Red Deer Municipal Planning Commission for any cooking on the site, and
- transportation of potentially hazardous foods is questionable and not addressed for all potential sites.

The Appellant and the RHA met and arrived at a settlement. Thus, the Appellant withdrew the appeal.

13/01

Order of Chinook Regional Health Authority

Appeal of the Order of an Executive Officer of the Chinook Regional Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of nuisance conditions by a specified date.

Hearing held July 4, 2001

PHAB varied the Order issued by an Executive Officer of the Chinook Regional Health Authority only to the extent of the time allotted to the Appellant to complete the repairs required to the satisfaction of an Executive Officer of the Chinook Regional Health Authority.

14/01

Order of Chinook Regional Health Authority

Appeal of the Order of an Executive Officer of the Chinook Regional Health Authority, requiring the Appellant to close and secure the wildlife gate so as to prevent public access to the recreational area, to be complied with no later than one day prior to expected drilling entry into the first sour gas zone.

The Chinook Regional Health Authority rescinded this Order and a new Order was issued on July 23, 2001. Please see Appeal 17/01.

15/01

Order of Capital Health Authority

Appeal of two Orders of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions on two different properties by a specified date.

Hearing held August 9, 2001

PHAB varied the Orders issued by an Executive Officer of the Capital Health Authority. The Appellant was permitted an extension of time to rectify the conditions of both properties.

16/01

Order of Capital Health Authority

Appeal of two Orders of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

Hearing held August 9, 2001 concurrent with Appeal No. 18/01

PHAB upheld the Orders issued by an Executive Officer of the Capital Health Authority. The Appellant must correct the conditions identified in the Orders to the satisfaction of an Executive Officer of the Capital Health Authority.

17/01

Order of Chinook Regional Health Authority

Appeal of the Order of an Executive Officer of the Chinook Regional Health Authority under Section 72 of the *Public Health Act*, requiring:

- the Appellant to deter roadway access to the Recreational Area and surrounding area by the public other than those required to attend the well site,
- Community Development to prohibit use of the Recreational Area by members of the public,
- Community Development to post signage at and about the Recreational Area advising the public of this Order, and
- compliance with all this commencing immediately.

Hearing held August 28, 2001

PHAB varied the Order by correcting the legal description for the location of the Campground and clarifying the grounds upon which the Order was issued. Once test results relating to the sour gas well are received, Chinook Regional Health Authority may issue a new Order or rescind the present Order. If they consider it necessary to issue a new Order, the Board suggests they consult with all affected parties before such the Order is issued. The Appellant filed an application for judicial review in the Court of Queen's Bench of Alberta.

18/01

Order of Capital Health Authority

Appeal of two Orders of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

Hearing held August 9, 2001 concurrent with Appeal No. 16/01

PHAB upheld the Orders issued by an Executive Officer of the Capital Health Authority. The owner must correct the conditions identified in the Orders to the satisfaction of the Capital Health Authority. The Appellant is a resident of this property.

19/01

Order of Capital Health Authority

Appeal of two Orders of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

Hearing held August 21, 2001

PHAB varied the Orders issued by an Executive Officer of the Capital Health Authority. An extension of 15 days was granted for the property to be vacated. If, prior to September 15, 2001, a certified engineer's report is obtained stating the foundation is safe and does not pose a risk to the occupants, the deadline for vacating may be extended. Occupancy may not be permitted until authorized by an Executive Officer of the Capital Health Authority.

20/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

The Appellant complied with the Order and withdrew the appeal.

21/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

Hearing held October 30, 2001 concurrent with Appeal No. 22/01 and 23/01

PHAB upheld the Order issued by an Executive Officer of the Capital Health Authority. The *Housing Regulation* and the *Minimum Housing and Health Standards* apply to the property, which was constructed well before September 1999.

22/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

Hearing held October 30, 2001 concurrent with Appeal No. 21/01 and 23/01

PHAB upheld the Order issued by an Executive Officer of the Capital Health Authority. The *Housing Regulation* and the *Minimum Housing and Health Standards* apply to the property, which was constructed well before September 1999.

23/01

Order of Capital Health Authority

Appeal of the Order of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, requiring the owner to repair a number of conditions by a specified date.

Hearing held October 30, 2001 concurrent with Appeal No. 21/01 and 22/01

PHAB upheld the Order issued by an Executive Officer of the Capital Health Authority. The *Housing Regulation* and the *Minimum Housing and Health Standards* apply to the property, which was constructed well before September 1999.

24/01

Order of Headwaters Health Authority

Appeal of the Order of an Executive Officer of the Headwaters Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

Hearing held November 12, 2001

PHAB upheld the Order issued by an Executive Officer of the Headwaters Health Authority. The Board finds the hydrocarbon contamination underneath the Property is significant and poses a serious risk to the health of its occupants.

25/01

Order of Westview Regional Health Authority

Appeal of Environmental Health Inspection Reports of an Environmental Officer of the Westview Regional Health Authority.

As there was no Order issued, this appeal was not properly filed. Thus, the Appellant withdrew the appeal.

26/01

Order of Capital Health Authority

Appeal of two Orders of an Executive Officer of the Capital Health Authority under Section 72 of the *Public Health Act*, declaring the housing premises unfit for human habitation.

Hearing held December 19, 2001

PHAB upheld the Orders issued by an Executive Officer of the Capital Health Authority. The Board finds the Property is unfit to be used for public housing purposes.

Other Activities

The **SFI/AISH Annual Conference 2001** provided PHAB with valuable information for holding fair hearings and writing up decisions. Two Board members attended the conference, which was held at the Grande Prairie Inn in Grande Prairie from May 23 – 25, 2001.

Application to the Court of Queen's Bench of Alberta

On September 17, 2001 the Appellant of Appeal 17/01 filed a judicial review application in the Court of Queen's Bench of Alberta seeking review of the Board's decision in Appeal 17/01. The application was heard before Mr. Justice MacLean of the Court of Queen's Bench of Alberta on November 13, 2001. By a decision issued November 23, 2001 and December 10, 2001, Justice MacLean quashed the Board's decision and directed that:

- the Chinook Regional Health Authority did not have the power to direct the Appellant to do anything in relation to its rights and powers over the road that accesses the Recreation Area and surrounding vicinity; and in particular,
- the Regional Health Authority had no authority to direct the Appellant close that road.

As at the date of this report, it is not known whether the Chinook Regional Health Authority will appeal this decision to the Alberta Court of Appeal.



